

'eggs,' 'egg' or 'milk' as part of either a firm name, trade name, or label; except that the word 'eggs,' 'egg' or 'milk' may be used on labels and otherwise as part of the bona fide description of the egg or milk content of defendant's products, provided such use is qualified by words or phrases indicating the extent, at least in general non-misleading terms, of such content. Any other use of these words in connection with defendant's products would be, in essence, a deception and would be part and parcel of the misbranding. In other words, if defendant shall no longer be permitted to fill an order for 'Egg-O-Milk' or 'Milk-malt' without re-labelling the products as herein explained, it certainly follows that, unless and until he in fact produces or deals in substantially different milk or egg products, he ought not to be allowed to write, or to otherwise hold himself out as though he dealt in 'Egg-O-Milk' or 'Milk-malt,' which clearly implies a product having a substantial milk or egg content, or both.

"I will sign an order in accordance with the opinion just rendered."

8895. Misbranding of Egg-O-Milk Co.'s Blend. U. S. v. 74 Bags of Egg-O-Milk Co.'s Blend. Default decree of destruction. (F. D. C. No. 15763. Sample No. 3613-H.)

LABEL FILED: April 5, 1945, Eastern District of Virginia.

ALLEGED SHIPMENT: On or about December 16, 1943, by the Egg-O-Milk Co., from Baltimore, Md.

PRODUCT: 74 100-pound bags of Egg-O-Milk Co.'s Blend at Richmond, Va. Examination showed that the article consisted essentially of soybean flour, wheat flour, small amounts of wheat bran, spray-dried grains resembling those of dried egg, and a trace of yeast.

LABEL, IN PART: "Egg-O-Milk Co.'s Blend Buttermilk, Skim Milk, Malt Flour, (Wheat Malt, Barley Malt, Soy Malt,) Powdered Egg-Yolk, Yeast."

NATURE OF CHARGE: Misbranding, Section 403 (a), the name "Egg-O-Milk Co.'s Blend" was misleading since the article was formerly sold under the name "Egg-O-Milk," and the name implied that the article consisted essentially of egg and milk. Further misbranding, Section 403 (a), the label statement, "Buttermilk, Skim Milk, Malt Flour, (Wheat Malt, Barley Malt, Soy Malt,) Powdered Egg-Yolk, Yeast," was false and misleading since the article contained little, if any, buttermilk or skim milk.

DISPOSITION: May 3, 1945. No claimant having appeared, judgment was entered ordering the product destroyed.

8896. Misbranding of Dr. MacDonald's Vitamized Egg Mash Maker, Dr. MacDonald's Vitamized Chick and Growing Mash Maker, and Dr. MacDonald's Vitamized Metabolators For Dairy Cattle, Sheep, Beef Cattle, Calves, and Swine. U. S. v. John R. MacDonald (Vitamized Feed Co.). Plea of nolo contendere. Fine, \$400 and costs. (F. D. C. No. 12557. Sample Nos. 8241-F, 8242-F, 8565-F, 8566-F, 8568-F to 8570-F, incl.)

INFORMATION FILED: December 14, 1944, Northern District of Iowa, against John R. MacDonald, trading as the Vitamized Feed Co., Fort Dodge, Iowa.

ALLEGED SHIPMENT: Between the approximate dates of March 20 and September 22, 1943, from the State of Iowa into the State of Minnesota.

PRODUCT: The Egg Mash Maker and Chick and Growing Mash Maker were sold as supplements for mixing poultry mashes. They consisted essentially of limestone, salt, charcoal, iron compounds, sulfate, iodide, plant material, and small amounts of other mineral substances. The remaining products were stock feeds consisting of cereal matter to which had been added, in various proportions and combinations, ground limestone, salt, charcoal, iron compounds, sulfates, sulfur, copper salts, iodide, oil, ginger, licorice and anise, small amounts of phosphorus, sodium thiosulfate, yeast, fenugreek, charcoal, iodine, iodides, and chloride.

NATURE OF CHARGE: *Egg Mash Maker*, misbranding, Section 403 (a), the label statement, "Iodine (I) Not less Than03906%," was false and misleading since the article contained a smaller amount of iodine. Further misbranding, Section 403 (a), the name of the article, the label statement, "Vitamized Egg Mash Maker," and certain statements in the accompanying circular entitled "Get More Egg By The Vitamized Way" were false and misleading since they represented and suggested that the article contained substances rich in vitamins; that it would produce extra quality eggs; that it contained all of the essential minerals required by poultry; and that it would increase egg production, produce better hatchability of eggs, improve the health of the flock, increase the vitality of poultry, build up body resistance

to disease, help to protect the hens against mortality, increase the digestibility of feed, and increase the flow of digestive juices and body secretions of poultry. The article did not contain substances rich in vitamins; it did not contain all of the essential minerals required by poultry; and it would not effect the results suggested or implied by the statements.

Chick and Growing Mash Maker, misbranding, Section 403 (a), the name of the article, the label statements, "Vitamized Chick Mash Maker, Chick Starter Chick Grower Makes 'Em Cackle Early" and "Vitamized Chick and Growing Mash Maker," and certain statements in the accompanying leaflet and circular entitled "Stop Chick Loss" and "Vitamized Feed News" were false and misleading since they represented and suggested that the article contained substances rich in vitamins; that it would be efficacious to stop chick losses and to prevent all disease conditions of chicks and chickens; that it would help to keep chicks in good health; that it would help to produce healthy mature birds in the shortest possible time; that it would promote nutritional balance in poultry, reduce mortality due to unbalanced feeds, increase egg production, and build greater resistance to disease; that it would help chicks to grow at a faster rate in a shorter period of time and at less cost; and that it would increase the flow of digestive juices and body secretions, build strong, vigorous, thrifty chicks, promote strong bone structure and rapid growth, improve flock health and vigor, ward off nutritional deficiency diseases, and build up resistance against infectious diseases. The article did not contain substances rich in vitamins, and it would not be efficacious to accomplish the results claimed.

Metabolator for Dairy Cattle, misbranding, Section 403 (a), the label statements, "Phosphorus (P) Not Less Than . . . 5%" and "Iodine (I) Not Less Than0625%," were false and misleading since the article contained less phosphorus and iodine than was represented. Further misbranding, Section 403 (a), the name of the article, the label statements, "Vitamized Metabolator * * * Makes Better Dairy Cattle and Stronger Calves" and "Vitamized Metabolator," and certain statements in an accompanying circular entitled "Which Pail of Milk Do You Want?" were false and misleading since they represented and suggested that the article contained substances which were rich in vitamins and which possessed properties of special value in promoting body metabolism; that it would increase milk production; that it was a profit maker; that it would reduce feeding costs and eliminate waste; that it would promote better digestion and assimilation of feed, help to build the general health of cattle, maintain peak milk flow, would produce stronger and bigger calves, prevent abortions, and help to prevent the common troubles of dairy cows; that it was a conditioner; that it would stimulate the digestive juices and step up the digestive processes of cattle; and that it would prevent sickness in livestock. The article did not contain substances rich in vitamins; it did not possess properties of special value in promoting body metabolism; it was not a conditioner; and the use of the article would not effect the results suggested or implied by the labeling.

Metabolator for Sheep, misbranding, Section 403 (a), the label statement, "Iodine (I) Not Less Than .0625%," was false and misleading since the article contained less than .0625 percent of iodine. Further misbranding, Section 403 (a), the name of the article, the label statements, "Vitamized Metabolator Sheep Balancer" and "Vitamized Metabolator For Sheep (Sheep Balancer)," and certain statements in an accompanying circular entitled "Vitamized Feed News," were false and misleading since they represented and suggested that the article contained substances rich in vitamins; that it possessed properties of special value in promoting body metabolism; and that the use of the article would make sheep, wool, and mutton production profitable, make lambs husky, increase milk flow at lambing time, improve the reproductive processes in sheep, cause better utilization of other food, and stimulate the appetite; and that it would produce a fine finish and high-quality carcass. The article did not contain substances rich in vitamins; it did not possess properties of special value in promoting body metabolism; and the use of the article would not effect the results suggested or implied by the labeling.

Metabolator for Beef Cattle, misbranding, Section 403 (a), the label statement, "Iodine (I) Not Less Than .0625%," was false and misleading since the article contained less than .0625 percent of iodine. Further misbranding, Section 403 (a), the name of the article, the label statement, "Vitamized Metabolator Cattle Balancer," and certain statements in an accompanying

circular entitled "Vitamized Feed News," were false and misleading since they represented and suggested that the article contained substances rich in vitamins; that it possessed properties which were of special value in promoting body metabolism; that it would be efficacious in promoting better digestion and assimilation of other food; that it would help to keep the animal on full feed; that it would help to stimulate the flow of saliva and other important digestive juices; and that it would produce rapid growth, health, and reproduction, promote nutritional balance in cattle, and promote smooth, even flesh and a glossy coat of hair. The article did not contain substances rich in vitamins; it did not possess properties of special value in promoting body metabolism; and the use of the article would not effect the results suggested or implied by the labeling.

Metabolator for Calves, misbranding, Section 403 (a), the label statements, "Phosphorus (P) Not Less Than 4.5% Iodine (I) Not Less Than .0625%," were false and misleading since the article contained less phosphorus and iodine than was represented. Further misbranding, Section 403 (a), the name of the article, the label statements, "Vitamized Metabolator * * * (Calf Balancer)," and certain statements in an accompanying circular entitled "Vitamized Feed News," were false and misleading since they represented and suggested that the article contained substances rich in vitamins; that it possessed properties which were of special value in promoting body metabolism; that it would promote nutritional balance; that it would be efficacious in the prevention and cure of scours in calves; and that it would prevent scours due to vitamin A and B deficiencies. The article did not contain substances rich in vitamins; it did not possess properties of special value in promoting body metabolism; and the use of the article would not effect the results suggested or implied by the labeling.

Metabolator for Swine, misbranding, Section 403 (a), the label statement, "Iodine (I) Not Less Than .0625%," was false and misleading since the article contained less than .0625 percent of iodine. Further misbranding, Section 403 (a), the name of the article, the label statement, "Vitamized Metabolator For Swine," and certain statements in an accompanying circular entitled "Vitamized Feed News," were false and misleading since they represented and suggested that the article contained substances rich in vitamins; that it possessed properties which were of special value in promoting body metabolism; that it would prevent death losses in hogs, insure against loss in hogs due to any cause, and prevent pigs from developing black and white scours; that it would be efficacious in the prevention and treatment of necro; that it would increase the benefits of home-grown grains, help to improve the health of the stock through better nutrition, increase reproductive ability, insure larger litters of husky pigs, improve the digestibility of feeds, increase the flow of saliva and digestive juices, and cause a better utilization of other food; that it would be efficacious in the prevention of pneumonia, worms, enteritis, and contagious diseases; and that it would increase the milk production of sows. The article did not contain substances rich in vitamins; it did not possess properties of special value in promoting body metabolism; and the use of the article would not effect the results suggested or implied by the labeling.

It was also alleged that another article, Necro Tonic For Swine, was misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 1645.

DISPOSITION: June 12, 1945. A plea of nolo contendere having been entered by the defendant, the court imposed a fine of \$400, plus costs.

8897. Misbranding of alfalfa meal. U. S. v. Elmo O'Rourke (Raffety & O'Rourke).
Plea of nolo contendere. Fine, \$50. (F. D. C. No. 8794. Sample Nos. 26481-F, 26482-F.)

INFORMATION FILED: On or about April 16, 1943, Eastern District of Missouri, against Elmo O'Rourke, trading as Raffety and O'Rourke, Wyatt, Mo.

ALLEGED SHIPMENT: On or about July 8, 1942, from the State of Missouri into the State of Maryland.

LABEL, IN PART: "R and O's 20% [or "17%"] Dehydrated Alfalfa Meal."

NATURE OF CHARGE: Misbranding, Section 403 (a), the label statement on a portion of the product, "Crude Protein, not less than 20.00%," was false and misleading since the portion contained less than 20 percent of crude protein; the label statements on the remainder of the product, "Crude Protein, not less